

**RULES
OF
THE TENNESSEE HEALTH FACILITIES COMMISSION**

**CHAPTER 0720—7
EXEMPTION FROM CERTIFICATE OF NEED REQUIREMENTS FOR
AMBULATORY SURGICAL TREATMENT CENTERS¹**

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~~0720—7—.01 PROCEDURES FOR REQUESTING DETERMINATION OF EXEMPTION~~

- ~~(1) The rules in this chapter will be used in determining whether any ambulatory surgical treatment center is entitled to an exemption from the certificate of need requirements, pursuant to §4 of Chapter 944, Public Acts of 1992.~~
- ~~(2) The Request for Determination process, as set forth in rule 0720—1—.03 will be utilized in determining whether a particular ASTC is entitled to an exemption. An inquiring party is directed to send a letter to the Commission office requesting a determination of exempt status pursuant to Public Chapter 944, Acts of 1992, and describing in complete but concise terms, the status of the proposed ASTC. The letter should include all relevant information necessary to accurately make a determination on the request, including, but not necessarily limited to, the following:
 - ~~(a) Identity of the party seeking the determination;~~
 - ~~(b) Identity of the party in whose name licensure will be sought;~~
 - ~~(c) The location of the proposed facility;~~
 - ~~(d) The proported basis of the exemption (i.e., the facility is “under construction,” or the party has made a “financial outlay” or “financial obligation” toward the establishment of the ASTC);~~
 - ~~(e) A description of any action toward establishing the center and the dates of such action; and~~
 - ~~(f) Documentation supporting and verifying the actions taken.~~~~
- ~~(3) The Commission may request additional information and documentation as it deems necessary.~~
- ~~(4) All requests for determination must be received no later than December 31, 1992. This shall not be construed as extending the defining date of the exempt class of ASTCs, i.e., July 1, 1992. Any Request(s) for Determination received after December 31, 1992 will not be considered by the Commission, in the absence of good cause shown.~~

~~0720—7—.02 DEFINITIONS.~~ As used in this chapter, the following terms have the following meanings:

- ~~(1) ASTC means an ambulatory surgical treatment center as defined in T.C.A. §68—11—102(1).~~

- ~~(2) Establishment of an ambulatory surgical treatment center means to create and bring into physical existence an ASTC. Establishing an ASIC requires more than a mere concept or idea. This rule shall not be interpreted as meaning that an ASTC must be established as of July 1, 1992 in order to qualify for an exemption from the Certificate of Need process.~~
- ~~(3) Financial obligation means a legal obligation to pay money or anything of value, except as otherwise provided in these rules. Such an obligation may be by contract, promissory note, or similar means.~~
- ~~(4) Financial outlay means the payment of money or anything of value, except as otherwise provided in these rules.~~
- ~~(5) Under Construction means that actual on site construction on an ASTC has begun, including the actual building of a structure, site improvement, or improvements to leased space. The work must be pursuant to a set of plans and specifications approved by the Tennessee Department of Health, pursuant to T.C.A. §68-11-202(e).~~

~~0720-7-.03 GUIDELINES FOR DETERMINING EXEMPTIONS~~

- ~~(1) In making a determination of whether an ASTC is entitled to an exemption, the Commission will consider all relevant facts and circumstances brought to its attention, which existed as of July 1, 1992. If, however, facts or circumstances occurring after July 1, 1992, could reasonably be expected to have a direct bearing on the Commission's decision, these facts and circumstances should be brought to the Commission's attention. An example is facts or circumstances indicating the abandonment of a project.~~
- ~~(2) Any ASTC which was under construction as of July 1, 1992, and which requests an exemption will be granted a determination of exemption under the following circumstances:~~
 - ~~(a) The party requesting the exemption submits a set of plans and specifications, which was approved by the Tennessee Department of Health pursuant to T.C.A. §68-11-202(e) prior to July 1, 1992, which corresponds to the site and facility for which the exemption is being sought.~~
 - ~~(b) Site work, including grading, clearing, and digging, which is not pursuant to a set of approved plans and specifications, will not qualify as being "under construction." Such site work may, however, qualify under the "financial outlay" or "financial obligation" exemption if, in addition to meeting the criteria set forth in subparagraph three (3) below, the party seeking the exemption establishes by objective, verifiable evidence that the site being prepared will be an ASTC, as opposed to any other type of facility or structure.~~
- ~~(3) In order to show that a financial outlay has been made or a financial obligation has been incurred for the establishment of an ASTC. The ASTC prior to July 1, 1992, the party seeking the exemption determination must show the following:~~
 - ~~(a) The financial outlay or financial obligation is directly related to the establishment of an ASTC. The ASIC does not have to be "established" prior to July 1, 1992.~~
 - ~~(b) The financial outlay or financial obligation is for more than a de minimus amount. In determining whether a financial outlay or a financial obligation is de minimus, the Commission will consider the amount of the expenditure in relation to the total projected cost of the project, and any other relevant factors, in order to determine whether the financial outlay or obligation reflects a good faith decision to establish an ASTC.~~
 - ~~(c) A financial outlay or financial obligation for a marketing study or survey will not qualify for the exemption.~~

- ~~(d) Legal and/or consulting fees (including fees for marketing studies or surveys), actually incurred which directly relate to the establishment of an ASTC will be considered if another qualifying financial outlay or financial obligation has been demonstrated. The payment of such fees alone, or merely for exploratory or investigatory purposes, will not be sufficient.~~

~~0720-7 .04 REQUIREMENTS FOR MAINTAINING EXEMPTION DETERMINATION~~

- ~~(1) Any entity receiving an exemption determination from the Commission must be the same entity and location when licensed. Any deviation in the entity or site will require notification to, and further clarification from, the Commission.~~
- ~~(2) If information is brought to the Commission's attention which indicates that a previously issued exemption determination was based upon fraudulent, misleading, incorrect or incomplete information from the representatives of the proposed ASTC, the Commission may reconsider the previously issued exemption determination.~~
- ~~(3) An exemption determination issued pursuant to this chapter is limited to the original establishment of the ASTC. Any future modifications, changes of site, or similar matters coming within the purview of T.C.A. §68-11-101 et seq., will be treated as otherwise provided by law.~~

¹ Agency Staff proposed that Chapter 0720-7 be deleted in its entirety because it is no longer relevant or necessary. Chapter 7 of the Rules was enacted in 1992, when ASTCs became subject to the CON requirement, and assisted with the transition.